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David R. Irvine; Janet I. Jenson; Jenson & Guelker; Alan L. Smith; Counsel for Plaintiff/Appellants.

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IN THE UTAH SUPREME COURT

TOM GREGORY, et al., :
Plaintiffs / Appellants, :
v. :
MARK SHURTLEFF, et al., : Case No. 20110473-SC
Defendants / Appellees. :

BRIEF OF DEFENDANTS / APPELLEES

Appeal from the Judgment of the Third Judicial District Court, Salt Lake County,
Judge L.A. Dever

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UTAH APPELLATE COURTS

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LIST OF ALL PARTIES

Plaintiffs / Appellants. Tom Gregory, Glen E. Brown, A. Lamont Tyler, Marjorie Tuckett, Teresa Theurer, Jordan Tanner, Debbie Swenson, Carmen Snow, Marilyn Shieds, Pat Rusk, Ronda Rose, Jack Redd, Georgia Peterson, Carole Peterson, Bonnie Palmer, Denis Morrill, Bill Moore, Sarah Meier, Rosalind McGee, Scott McCoy, Sheryl Allen, Dee Burningham, Kim Burningham, Carolyn White, Michael Jensen, Steven O. Laing, Judy Larson, Lisa Watts Baskin, David Hogue, Rebecca Chavez-Houck, Janice Fisher, Christine Johnson, Beth Beck, Mike Marsh, Karen Hale, Becky Edwards, Janet Cannon, and Steven C. Baugh

Defendants / Appellees. Utah Attorney General Mark Shurtleff, Utah Treasurer Edward Alter, and Executive Director Jeff Herring of the Utah Department of Human Resource Management

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IN THE UTAH SUPREME COURT

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Defendants / Appellees.	:	

BRIEF OF DEFENDANTS / APPELLEES

STATEMENT OF JURISDICTION

This action comes within the original jurisdiction of this Court under Utah Code Ann. § 78A-3-102(3)(j) (West 2009).

STATEMENT OF ISSUE ON APPEAL

Does 2008 Laws of Utah ch. 397 (Senate Bill No. 2, 2008 General Session) violate the requirements of Utah Const. art. X, § 3 by delegating to others powers that belong to the State Board of Education?

ISSUE PRESERVED BELOW: This issue was raised in the Defendants' motion for partial summary judgment (R. 795-822) and was the basis of the district court's decision. R. 945-52.

STANDARD OF REVIEW: A grant of summary judgment is reviewed for correctness, giving no deference to the district court's decision. Summary judgment is

appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Franco v. Church of Jesus Christ of Latter-Day Saints, 2001 UT 25, ¶32, 21 P.3d 198. “The issue of whether a statute is constitutional is a question of law that we review for correctness, ‘affording no particular deference to the trial court's ruling.’ Furthermore, ‘[a] statute is presumed constitutional, and “we resolve any reasonable doubts in favor of constitutionality.”’” Utah Sch. Bd. v. Utah State Sch. Bd., 2001 Ut 2, ¶9, 17 P.3d 1125 (citations omitted).

DETERMINATIVE CONSTITUTIONAL PROVISIONS

Article X, Section 1. [Free nonsectarian schools.]

The Legislature shall provide for the establishment and maintenance of the state's education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.

Article X, Section 2. [Defining what shall constitute the public school system.]

The public education system shall include all public elementary and secondary schools and such other schools and programs as the Legislature may designate. The higher education system shall include all public universities and colleges and such other institutions and programs as the Legislature may designate. Public elementary and secondary schools shall be free, except the Legislature may authorize the imposition of fees in the secondary schools.

Article X, Section 3. [State Board of Education.]

The general control and supervision of the public education system shall be vested in a State Board of Education. The membership of the board shall be established and elected as provided by statute. The State Board of Education shall appoint a State Superintendent of Public Instruction who shall be the executive officer of the board.

STATEMENT OF THE CASE

On May 29, 2008, the Plaintiffs filed this action. R. 1-36. Mark Shurtleff, Utah's Attorney General, Edward Alter, Utah's Treasurer, and Jeff Herring, the Executive Director of the Utah Department of Human Resource Management, were named as Defendants. R. 1-2. Plaintiffs alleged that Senate Bill No. 2 violated Article VI, Section 22, and Article X, Section 3 of the Utah State Constitution.

Defendants filed a motion to dismiss the first two causes of action, based on Article VI, Section 22. R. 37-94, 411-60. The district court granted Defendants' motion on May 20, 2009. R. 707-18. On January 31, 2011, the district court certified that order as final pursuant to Utah Rules of Civil Procedure 54(b). R. 823-24. Plaintiffs filed their first appeal on March 1, 2011 (Case No. 20110277-SC). R. 938-40.

Defendants also filed a motion for partial summary judgment (R. 795-822), asking the district court to dismiss the Plaintiffs' third and fourth causes of action. These claims alleged that two portions of Senate Bill 2 violated Article X, Section 3 of Utah's Constitution by delegating to others the constitutional powers of the State Board of Education. R. 26-27. On May 2, 2011, the district court granted this motion, dismissing the remainder of the Plaintiffs' complaint. R. 945-52. Plaintiffs filed this appeal on May 25, 2011. R. 955-57.

STATEMENT OF RELEVANT FACTS

Plaintiffs challenge two portions of Senate Bill 2 as delegating to others the constitutional powers of the State Board of Education. The first is an amendment to the statutes dealing with the State Instructional Materials Commission. The Commission is appointed by the Board. It evaluates textbooks and other materials makes recommendations to the Board. Utah Code Ann. § 53A-14-101 (West 2004). Acting on these recommendations, the Board maintains a list of instructional materials that it recommends that Utah school districts use. Utah Code Ann. § 53A-14-102 (West 2004). With a limited exception, school districts have discretion whether to use the instructional materials recommended by the Board or to choose other materials that they consider appropriate. *Id.* at (4),

In 2007, the Legislature added an additional requirement as Utah Code Ann. § 53A-14-107. School districts were prohibited from purchasing primary instructional materials unless those materials had been independently evaluated. The provider of the material had to contract with an independent party to “evaluate and map the alignment of the primary materials with the core curriculum adopted under Section 53A-1-402.” 2007 Laws of Utah ch. 349, § 2.

Senate Bill 2 amended Section 107 to provide greater supervision over this process to the Board. The Board is to establish the qualifications required of the independent

evaluators. R. 70. The Board is also to establish requirements as to the information that the summaries of the evaluations, made available on a public website, must contain. Id.

Senate Bill 2 also provides for a Teacher Salary Supplement Program. R. 80-83. The program seeks to encourage retention of qualified teachers in certain science courses by providing them with an annual salary supplement. R. 80-81. Plaintiffs challenge the fact that the Department of Human Resource Management (DHRM), and not the Board, is to run the program. R. 81-83. The salary supplements are sent to the school districts by the Division of Finance for distribution. R. 82-83.

SUMMARY OF ARGUMENT

Utah's Constitution grants both the Legislature and the Board certain powers and responsibilities in the operation of Utah's public education system. The Board is not granted absolute authority. Senate Bill 2 does not unconstitutionally delegate to others the constitutional authority of the Board.

Senate Bill 2 amends Section 53A-14-107 so as to provide the Board more authority over the independent evaluation required of would be vendors of instructional materials. The vendor is not given any power to make government decisions. The vendor is only required to provide more detailed information, at its own expense, so school districts can make informed decisions as to what instructional materials to purchase.

No core function of the Board has been given to DHRM by Senate Bill 2. The Legislature was within its power to provide a salary supplement as an incentive to eligible

individuals to teach certain science courses. The administrative task of determining which teachers are eligible is not a core function that can only be done by the Board.

ARGUMENT

I. UTAH'S LEGISLATURE, AS WELL AS THE STATE BOARD OF EDUCATION, HAS AUTHORITY OVER PUBLIC EDUCATION

Plaintiffs correctly state that Utah's Constitution vests the "general control and supervision of the public education system" with the Board. Utah Const. art. X, § 3. But Plaintiffs fail to acknowledge that the constitution also states that the Legislature "shall provide for the establishment and maintenance of the state's education systems including . . . a public education system." Utah Const. art. X, § 1. The Legislature also is given the task of creating that system and its programs. Utah Const. art. X, § 2 ("The public education system shall include all public elementary and secondary schools and such other schools and programs as the Legislature may designate.")

Utah's Constitution is one of limitation of authority.

The Utah Constitution is not one of grant, but one of limitation. "The state having thus committed its whole lawmaking power to the legislature, excepting such as is expressly or impliedly withheld by the state or federal constitution, it has plenary power for all purposes of civil government." Univ. of Utah v. Bd. of Examiners, 4 Utah 2d 408, 426, 295 P.2d 348, 361 (1956) (quoting Kimball v. Grantsville, 19 Utah 368, 383, 57 P. 1, 4-5 (1899)); see also Spence v. Utah State Agric. Coll., 119 Utah 104, 112, 225 P.2d 18, 23 (1950); 16 C.J.S. Constitutional Law § 58, at 150 (1984) ("As a general rule, the legislature possesses and may exercise all legislative power, or power to enact statutes, of the state or people of the state, subject only to the limitations or prohibitions imposed by the state constitution."). Therefore, if the legislature is to be "restricted in educational as well as all other matters, it is imperative that the Legislature

be restricted expressly or by necessary implication by the Constitution itself.” Bd. of Exam'rs, 4 Utah 2d at 426, 295 P.2d at 360; see also Evans & Sutherland Computer Corp. v. Utah State Tax Comm'n, 953 P.2d 435, 442 (Utah 1997); Wadsworth v. Santaquin, 83 Utah 321, 336, 28 P.2d 161, 167 (1933); State v. Lewis, 26 Utah 120, 123, 72 P. 388, 389 (1903); 16 C.J.S. Constitutional Law, *supra*, § 58, at 150-51. As a result, the Act at issue must be deemed constitutional unless an examination of the Utah Constitution reveals limitations upon the legislature with respect thereto.

Utah Sch. Bd. v. Utah State Sch. Bd., 2001 Ut 2, ¶11, 17 P.3d 1125.

In Utah School Boards, the plaintiffs claimed that the Legislature did not have the constitutional authority to give the Board supervision over charter schools. Instead, this Court held that the Legislature has plenary authority to enact laws to establish and maintain Utah’s public education system. Id., at ¶14. This Court held that the Legislature, through enacting the challenged statute, gave the Board control and supervision over charter schools. Id., at ¶23.

In their brief, Plaintiffs argue that Utah’s Legislature cannot remove constitutionally granted powers from particular government officers and offices. Plaintiffs’ / Appellants’ Opening Brief at 20-30. In making this argument, Plaintiffs rely on cases concerning two Utah executive officers, two boards, and one commission. Plaintiffs fail to recognize that these five examples have different applicable constitutional and statutory provisions containing different language. An example is the Plaintiffs’ misplaced reliance on this Court’s decisions concerning the Board of Examiners.

Plaintiffs erroneously state that Utah's Board of Examiners has been abolished. Id. at 22. While it is no longer a constitutional entity, the Board still exists. Utah Code Ann. § 63G-9-101 et seq. (West 2009). Nor are the powers attributed to the Board of Examiners by the Plaintiffs constitutional in nature. Utah's Constitution never provided that claims against the State of Utah had to be approved by the Board of Examiners before they could be paid. That power was given by the Legislature.

Section 13 of article 7 of the Constitution of Utah provides for a board of examiners composed of the Governor, secretary of state, and Attorney General "with power to examine all claims against the State except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law." Pursuant to this constitutional provision the Legislature has more particularly specified the duties of the board of examiners in title 29, Comp. Laws Utah 1917. In section 2471 of title 29, it is provided that: "Any person having a claim against the state, for which an appropriation has been made, may present the same to the board, in the form of an account or petition." Section 2482, as amended by chapter 51, Laws Utah 1921, provides: "The state auditor shall not draw his warrant for any claim, unless it has been approved by the board, except for salaries or compensation of officers fixed by law, or for moneys expressly appropriated by law."

Uintah State Bank v. Ajax, 297 P. 434, 437 (Utah 1931).

The approval power, granted by the Legislature, was also removed from the Board of Examiners by the Legislature. In Wood v. Budge, 374 P.2d 516, 517-18 (Utah 1962), this Court held that the Legislature had the power to pay a claim that had been rejected by the Board of Examiners. The constitutional authority of the Board of Examiners was limited to considering and acting on the claim and not binding the Legislature by the Board's decision.

Plaintiffs correctly argue that this Court, in Toronto v. Clyde, 393 P.2d 795, 796 (Utah 1964), held that Utah's Constitution gave "general supervisory power" to the Board of Examiners over state expenditures. But Plaintiffs ignore that this power was limited to the "power to examine all claims" and not the power to deny the same. Id. at 798 ("As we have heretofore stated, from the endowment of Examiners with the 'power to examine all claims' it is only reasonable to assume that it was intended that they should perform that duty.") (citing Wood, 374 P.2d at 519). The statute was declared unconstitutional because it didn't permit the Board of Examiners to examine all claims. The Board, as stated in Wood, did not have the power to deny a claim. That decision was left to the Legislature.

As shown with the Board of Examiners, Defendants submit that the specific powers provided to these five separate groups are not sufficiently similar to the question dealing with the State Board of Education. The Plaintiffs' argument based on these officers and entities is neither helpful nor relevant.

The State Board of Education's authority over Utah's system of public education is not absolute. The Legislature also has authority over public education. The question is whether the Legislature has sought to unconstitutionally delegate to others the State Board of Education's authority.

II. SENATE BILL 2 DID NOT UNCONSTITUTIONALLY DELEGATE ANY CORE FUNCTION OF THE STATE BOARD OF EDUCATION TO ANOTHER

Plaintiffs argue that Senate Bill 2 delegates to others the constitutional authority of the Board. This Court has held that the Legislature cannot delegate to another the core functions of a branch of government

For example, a legislator cannot appoint another person to cast his or her vote on the floor of the legislature. Although a legislator can utilize assistants for various purposes, these assistants cannot exercise the legislator's voting power since such is a core legislative function. It is the legislator, not his or her staff, who is elected for that purpose, and it is the legislator who is accountable to the people.

Likewise, a judge cannot appoint another person to enter final judgments and orders or impose sentence. While he or she can utilize referees, court commissioners, and other assistants for various purposes, those persons cannot exercise that judge's ultimate judicial power, for such is a nondelegable core judicial function. In courts of record, it is the judge who is selected by a precise constitutional procedure to exercise judicial power, and it is the judge, not other "quasi-judicial" officers, who is subject to the accountability provisions of the Utah Constitution.

Salt Lake City v. Ohms, 881 P.2d 844, 848-49 (Utah 1994).

Core functions are those powers "necessary to protect the fundamental integrity of" that branch of government. Id. at 849. The delegation doctrine does not prohibit others from performing non-core functions. Court commissioners can perform many duties to assist the judicial branch even though they cannot perform core functions such as authorizing search warrants. State v. Thomas, 961 P.2d 299, 302 (Utah 1998).

A. Senate Bill 2's Amendment of Section 107 Did Not Affect a Core Function of the Board

Senate Bill 2 did not seek to delegate any core function of the State Board of Education to another entity. Utah law requires those who desire to sell instructional material to Utah's school districts to provide an independent evaluation of those materials to assist school districts in deciding which textbooks and materials to buy. A detailed summary of the evaluation is required to be placed on a public website where interested persons can view it free of charge. The evaluation maps the alignment of the instructional material with the core curriculum adopted by the Board. Utah Code Ann. § 53A-14-107 (West Supp. 2007).

This did not alter the Board's authority to set the curriculum that must be taught in Utah's public education system. Utah Code Ann. § 53A-1-402 (West Supp. 2011). It did not alter the Board's authority to publish a list of recommended instructional materials. Utah Code Ann. § 53A-14-102 (West 2004). It simply required would be vendors to make more information available to school districts so they could make an informed decision as to what instructional materials the districts should purchase.

Senate Bill 2 amended Section 107 by increasing the authority of the Board over this process. The Bill authorizes the Board to establish the qualifications that will be required to qualify as an independent evaluator. R. 70. The Board is also to clarify what information must be provided in the detailed summary of the evaluation. Id.

The requirement that a vendor of instructional materials obtain an independent evaluation of its merchandise does not delegate a core function of the Board. It does not prohibit the Board from performing its statutory duty to recommend what instructional materials it believes school districts should use. It simply requires the vendor to provide more information to help school districts make an informed choice of what instructional materials they will use.

Plaintiffs erroneously claim that the statute delegates to the vendors government decision making. Decisions concerning the delegation of government decision making to private citizens are not applicable. In Salt Lake City v. I.A. of Firefighters, 563 P.2d 786, 789-90 (Utah 1977), this Court held that private arbitrators could not be delegated authority to make basic government policy. See also Stewart v. Utah Pub. Serv. Comm'n, 885 P.2d 759, 775-76 (Utah 1994) (legislature could not give a private party right to veto rate plan without any guidance as to its use). But Section 107 gives no power to a private party. It only requires that would be vendors provide more information to the school districts that are their consumers.

B. The Teacher Salary Supplement Program Does Not Affect a Core Function of the Board

Senate Bill 2 enacted the Teacher Salary Supplement Program. R. 80-83. The program provides certain science teachers an annual salary supplement. The necessary money is distributed to the school districts and charter schools by the Division of Finance,

based on information obtained by DHRM as to how many eligible teachers each employs.

This program does not affect a core function of the Board.

It has no impact on the Board's control over the curriculum to be taught in the public school system. It impacts no power of the Board. The amount to be distributed is established by statute. The Board does not claim that one of its core functions is to establish public school teachers' salaries. It does not claim that one of its core functions is to set the amount of the supplement that certain teachers should receive from the Legislature.

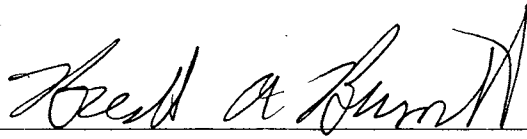
The Legislature sets the amount of the salary supplement. The Legislature set the what classes must be taught by an educator and what educational background is required to qualify for the supplement. DHRM's only function is to accept applications to the program, confirm the teacher's eligibility, and submit the list of eligible teachers to Finance.

Utah's Department of Human Resource Management is not performing a core function of the Board.

CONCLUSION

The district court correctly held that Senate Bill 2 did not violate Article X, Section 3 of the Utah State Constitution. That decision should be affirmed on appeal.

Respectfully submitted this 14th day of December, 2011.

A handwritten signature in cursive script, reading "Brent A. Burnett", written over a horizontal line.

BRENT A. BURNETT

Assistant Attorney General

Attorney for Defendants

CERTIFICATE OF MAILING

This is to certify that I mailed, first class postage prepaid, two copies of the foregoing BRIEF OF DEFENDANTS / APPELLEES to the following this 14th day of December, 2011:

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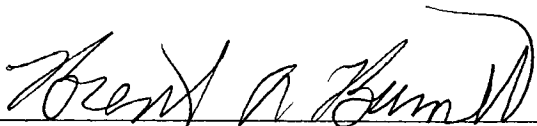
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ADDENDUM “A”

MAY 02 2011

SALT LAKE COUNTY

By _____
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY
STATE OF UTAH

TOM GREGORY, et al.,
Plaintiffs,

vs.

MARK SHURTLEFF, et al.,
Defendants.

RULING

Case No. 080908814

Judge: L.A. DEVER

The above entitled matter is before the Court on (1) Defendants' Motion for Partial Summary Judgment, (2) Plaintiffs' Cross-Motion for Partial Summary Judgment, and (3) Plaintiffs' Motion to Strike Evidentiary Matters. Having reviewed the noted motions and having heard oral arguments on the matters on March 1, 2011, the Court makes the following Ruling.

The parties' Motions center on Plaintiffs' Counts Three and Four of their Complaint. Count Three asserts that Senate Bill Two ("SB2") violates the non-delegation doctrine of Article X, Section Three of the Utah Constitution. Specifically, Plaintiffs maintain that the Teacher Salary Supplement Program violates the non-delegation doctrine by delegating the authority of the Utah State Board of Education ("USBE") to administer education related programs to the Utah Department of Human Resources.

Count Four maintains that same violation of the non-delegation doctrine of the USBE's authority to evaluate instructional materials to an independent party.

Article Ten, Section Three of the Utah Constitution ("Article X"), provides in part, that "[t]he *general* control and supervision of the public education system shall be vested in a State Board of Education." (2011)(emphasis added).

Although the language does not define the scope of "general control and supervision," the same language was first enacted in the 1896 of Utah State Constitution. Article Ten, Section Eight¹ read, "The general control and supervision of the Public School System shall be vested in a State Board of Education consisting of the Superintendent of Public Instruction, and *such other persons* as the Legislature may provide." (emphasis added).

To appropriately address the issue put forth to this Court, the Court must discern the meaning of SB2 in light of the intent of the framers of the constitution. State Bd. of Educ. v. State Bd. of Higher Educ., 505 P.2d 1193, 1195 (Utah 1973) ("It is a cardinal rule of constitutional construction that the instrument must be construed in the light of what was intended by its framers. The intended meaning must be ascertained from the whole of the instrument and in construing a particular section the court may refer to any other section or provision to ascertain its purpose and intention."); see also Utah Sch.

¹The 1986 amendment, S.J. Res. 1, 46th Leg., 2d Spec. Sess., (Utah 1986), renumbered the provisions of the former Section Eight to the current numbered Section.

Bds. Ass'n v. Utah State Bd. of Educ., 2001 UT 2, ¶9 (“The power and duty of ascertaining the meaning of a constitutional provision resides exclusively with the judiciary. The issue of whether a statute is constitutional is a question of law[.]” (citations omitted)).

The Court notes that neither party provided to the Court any evidentiary support of legislative history, reports, journals, or other legislative documents to elucidate the intent of the framers in the scope of power granted to the USBE.

The Utah Supreme Court explained, “Since statehood the legislature, from time to time, has specified the duties and responsibilities for the State Board of Education.” State Bd. of Educ., 505 P.2d at 1195. Plaintiffs failed to present any evidence that the Legislature does not have continuing authority to specify or alter the USBE’s duties. See Utah Sch. Bds. Ass’n, 2001 UT at ¶14 (“The legislature has plenary authority to create laws that provide for the establishment and maintenance of the Utah public education system.”)

In Utah’s first enacted constitution of 1896, in addition to the provision of “general control and supervision,” Article Ten, Section Nine specifically precluded the USBE to “prescribe text books to be used in the common schools.”² This provision

²Utah Code Annotated Section 53-13-1 et. seq., entitled State Textbook Commission, was renumbered in 1990 as Section 53A-14-101 et. seq.

remained as part of Utah's constitution until 1986 when Article Ten, Sections Eight and Nine were renumbered. There is no indication, nor any evidence presented, that the intent of the 1986 constitutional amendments was to grant the USBE sole involvement and regulation of Utah's public education system. S.J. Res. 1, 46th Leg., 2d Spec. Sess., (Utah 1986).

Before the 1986 constitutional amendments, the related statutory provisions, Utah Code Annotated Section 53-2-1³ et. seq., specifically Section 53-2-12 provided:

(1) The general control and supervision of the public system is vested in the State Board of Education. "General control and supervision" as used in Article X, Sec. 8, fo the Utah Constitution means comprehending or directed to the whole, as *distinguished* from authority or power to govern or manage a specific division, category, branch, school, on institution in the public school system, *except* as otherwise specifically directed by statute.

(1953) (Interim Supp. 1984)(emphasis added).

Following the 1986 constitutional amendments, Section 53-2-12, was repealed and reenacted to read:

(1) The State Board of Education has general control and supervision of the public school system. "General control and supervision" as used in Article X, Sec. 8⁴, of the Utah Constitution means comprehending or directed to the whole system.

Id. (1986 Cumulative Supp.)

³The current Section 53A-1-401 et. seq. was enacted by Chapter 2, Laws of Utah 1988.

⁴The amended Article 10, Section Three of the constitution became effective July 1, 1987.

“Shortly after adoption of the Utah Constitution, the legislature understood general control and supervision to mean *management* of all aspects of the public education system[.]” Utah Sch. Bds. Ass'n, 2001 UT at ¶17 (citation omitted)(emphasis added).

Plaintiffs fail to explain how lines 482-488 of SB2 strips the USBE of its authority to manage, especially in light of the following key language:

- (3) [T]he State Board of Education *shall* make *rules* that establish:
 - (a) the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials. . . ; and
 - (b) requirements for the detailed summary of the evaluation[.]

Utah Code Ann. § 53A-14-107 (2011) (emphasis added). This language is not indicative of the removal of any authority of the USBE rather, it unambiguously establishes the USBE as the body to regulate the textbook commission in its assessment of instructional materials.

In order to demonstrate the need for well-established legal and evidentiary support in the submission of any motion, the Court addressed Plaintiffs’ Count Four in spite of Plaintiffs’ failure to provide the same in support of its argument; however, the Court will not do the same for Plaintiffs’ Count Three⁵.

⁵The Court notes that Plaintiffs’ only argument was based upon the doctrine of non-delegable powers. Plaintiffs failed to address pertinent issues related to matters of constitutional analysis including the standard of review, evidentiary burdens, the issue of severability, relevant procedural or legislative history, etc.

As well noted, it is not the burden of the Court to research and develop a party's argument. State v. Gamblin, 2000 UT 44, ¶¶6-8, 1 P.3d 108.

In matters of constitutional consideration, the Utah Supreme Court explained:

The Utah Constitution is not one of grant, *but one of limitation*. The state having thus committed its whole lawmaking power to the legislature, excepting such as is expressly or impliedly withheld by the state or federal constitution, it has plenary power for all purposes of civil government. Therefore, if the legislature is to be restricted in educational as well as all other matters, it is imperative that the Legislature be restricted *expressly* or by *necessary implication* by the Constitution itself. As a result, the Act at issue *must be deemed constitutional* unless an examination of the Utah Constitution reveals limitations upon the legislature with respect thereto.

Utah Sch. Bds. Ass'n, 2001 UT at ¶11 (citations and quotations omitted)(emphasis added).

Furthermore, summary judgment is proper only if there is no genuine issue as to any material fact and that the moving party is *entitled to a judgment as a matter of law*. Gudmundson v. Del Ozone, 2010 UT 33, ¶44, 232 P.3d 1059 (citation and quotations omitted)(emphasis added).

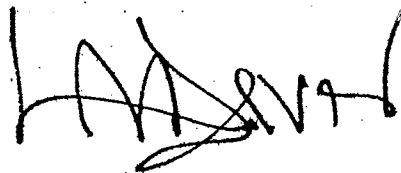
Because Plaintiffs failed to show that they are entitled to summary judgment as a matter of law, their Motion for Partial Summary Judgment is DENIED.

Additionally, because a statute is presumed constitutional and any doubts are to be resolved in favor of constitutionality, the Court GRANTS Defendants' Motion for Partial Summary Judgment.

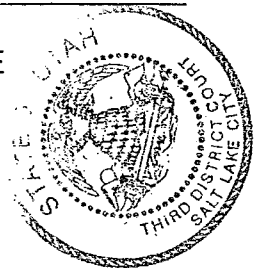
Based upon the Court's Ruling, Plaintiffs' Motion to Strike is MOOT.

Dated this 1st day of May, 2011.

BY THE COURT:



L.A. DEVER
DISTRICT COURT JUDGE



CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Ruling dated
this 2 day of May, 2011, postage prepaid, to the following:

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CLERK OF COURT